IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19494 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALWANTBHAI BHIMABHAI RAVAL (DETEUE) - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr.N.D.Gohil, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/11/2005

ORAL JUDGMENT

1.Balwantbhai Bhimabhai Raval, through his wife Lilaben Bhimabhai Raval has filed this petition

for issuance of writ of habeas corpus or any other appropriate writ, order or direction under Article 226 of the Constitution of India to quash and set aside the order of detention dated 7.9.2005 passed by the detaining authority i.e., Police Commissioner, Surat City as being illegal, invalid, arbitrary, suffers from total non-application of mind and violative of Articles 14, 21 and 22 of the Constitution of India.

2.The petition has been filed on 21.09.2005. When the matter was placed before this court (Coram : A.S.Dave, J) on 26.09.2005, this Court issued the Rule making it returnable after 4 weeks. In pursuance of the said order, the matter is placed before this Court for hearing today.

3.Ms.Banna Dutta, learned advocate appearing for the petitioner has invited my attention to the order of the detention dated 7.9.2005 and the grounds of detention supplied by the detaining

authority for detaining the petitioner under the Gujarat Prevention of Anti Social Activities Act, 1985 (“the PASA Act” for short). From the grounds of detention, it reveals that the authority has relied upon the criminal case being C.R.No.5390 of 2005 registered at Varachha Police Station for the offence under Sections 66(1)(b),65(E)(A), 81 and 116 of the Bombay Prohibition Act. In view of the aforesaid incident, the detaining authority has passed the detention order in exercise of the powers under Sub-Section 1 of Section 3 of the PASA Act with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of the public order.

4.It is stated that the offence was committed on 19.08.2005 and the muddammal recovered was of 539 bottles of foreign liquor which is valued at Rs.16,170/- and fronti car which is valued at Rs.41,170/-. It is stated that the action

under the ordinary law is found insufficient and to curb the activities of the petitioner and to maintain the public order and public health, the impugned order has been passed against the petitioner.

5.The petitioner has challenged the impugned order on various grounds.

6.Learned advocate for the petitioner has submitted that the alleged activity of the petitioner cannot be said to be the activities which falls within the purview of the definition of bootlegger as defined under Section 2(B) of the PASA Act. Learned advocate for the petitioner has relied upon unreported judgment of this Court (Coram : A.L.Dave, J) in the case of Rameshbhai Ratnabhai Vaghela V/s District Magistrate, Ahmedabad in Special Civil Application No. 6910 of 1999 decided on 19.11.1999 and also the decision in the case of Rameshchandra A Kamat V/s Union, reported in AIR 1980 SC 765. It is therefore, requested to

quash and set aside the impugned order.

7. On the other hand, Mr.N.D.Gohil appears for the respondent State and the detaining authority. He has relied upon the order of detention and the grounds stated therein. It may be noted that the detaining authority has not filed any affidavit in this behalf.

8. I have considered various contentions of the petitioner in this behalf and I find great force therein. I am of the view that when the solitary incident has been alleged against the petitioner that also of the offence for the muddammal 539 bottles of foreign liquor which is valued at Rs.16,170/-, it cannot be considered by any stretch of imagination that the petitioner is a bootlegger within the meaning of the provisions of the PASA Act.

9. I have considered the judgment of this Court in Special Civil Application No. 20420 of 2005 decided on 15.11.2005.

10. In view of the above, the petition is allowed.

The order of detention dated 7.9.2005 is quashed and set aside. The detenu Balwanthhai Bhimabhai Raval is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M.MEHTA, J)

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